[redacted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CC Docket No. 96-149

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN ELECTRIC COMPANY, INC., AND AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Defendants.	Civil Action No. 82-0192-HHG

ORDER

Upon consideration of the Motion of the United States for a Waiver of the Modification of Final Judgment to Permit the BOCs to Provide MultiLATA 911 Service, filed on November 17, 1988, and good cause having been shown, it is hereby

ORDERED that the United States' motion is granted and the Bell Operating Companies are permitted to provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary.

Harold H. Greene

HAROLD H. GREENE
United States District Judge

Dated: Feby 2, 1989.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN ELECTRIC COMPANY, INC., AND AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Defendants.	Civil Action No. 82-0192
UNITED STATES OF AMERICA, Plaintiff, v. AMERICAN TELEPHONE AND TELEGRAPH COMPANY, et al., Defendants.	Misc. No. 82-0025 (PI)

MEMORANDUM

In December 1983, the Court received a number of motions for clarification of the decree and for waivers or modification of the decree's provisions. In order to avoid the disruption of necessary service or the reconfiguration of existing network arrangements which might later prove unnecessary, the Court granted the relief sought by these motions on a temporary basis,

effective through February 15, 1984.[1] This Memorandum disposes of the motions involving such temporary relief as well as several others which were filed just prior to divestiture. The remaining pending motions will be considered in due course.

I

A number of the motions are unopposed. The Court finds that the relief requested by these motions will serve the public interest by avoiding expensive reconfigurations and unnecessary disruption of telephone service, will not endanger competition, and is consistent with the purposes of the decree. Accordingly, the following motions are hereby granted.

1. The motion filed on December 9, 1983, by Ameritech, Bell South, Nynex, Southwestern Bell, and US West, seeking waivers of the decree and declaratory rulings so that these companies may (a) provide E911 emergency service; (b) use, for a five-year transition period required to accomplish the necessary network rearrangements,[2] a limited number of

---

1/ See Court's Orders of December 14, 1983 and December 22, 1983.

2/ MCI and Western Union question the need for the five-year period, MCI suggesting that three years is sufficient to accomplish the network reconfiguration necessary to separate AT&T and the Operating Company network, and Western Union recommending a maximum of two years. The Court will grant the five-year waiver based on the representations of AT&T and the Operating Companies that they will develop schedules for gradual phasing out of all transitional trunking arrangements; that such schedules will be reviewed by the Department of Justice; and that the great bulk of the arrangements is anticipated to be completed well in advance of the five-year period.

facilities[3] for the transmission of AT&T traffic between switching systems in different LATAs and across the Mexican and Canadian borders[4] and between switching systems in the same LATA, and for private line transmission between points in different LATAs;[5] and (c) provide non-optional extended area service between an Operating Company exchange and a nonassociated independent telephone company exchange.

3/ The total trunks covered by these waivers represent less than two percent of total trunk groups in the former Bell system.

4/ AT&T, in its response, stated that waivers will not be necessary where the Operating Company end offices perform both inter-LATA and intra-LATA functions and the final route for both types of telecommunications out of those end offices is to an AT&T-operated Class 4 switching system in a different LATA. AT&T reasons that this is so because it plans to establish points of presence in facilities associated with those end offices. There seems to be some disagreement as to whether AT&T may or should establish points of presence in the Operating Companies end offices at issue. The Court need not and does not decide that question at this time. Instead, it will grant the waivers requested by Ameritech, et al., without prejudice to AT&T's right to establish points of presence.

5/ The situations in which transitional trunking arrangements will be required are as follows:

(1) inter-LATA routing or transporting between Operating Company-owned Class 5 and AT&T-owned Class 4 or higher switching systems;

(2) selective intra-LATA routing between a Class 5 and two Class 4 switching systems;

(3) inter-LATA routing between two Class 4 switching systems; and

(4) direct routing of adjacent international traffic between certain cities in the U.S. and Mexico and Canada, as modified by AT&T's response and the reply of Ameritech, et al.

2. Mountain Bell's motion of December 12, 1983 seeking (a) approval of the reassociation of the Navajo Communications Company exchanges from the Phoenix, Arizona and Utah LATAs to the New Mexico LATA; (b) a waiver with regard to those exchanges that will cross state boundaries; and (c) a limited waiver permitting Mountain Bell to provide inter-LATA private line service to the Air Force at its facilities near Upton, Wyoming, and adjacent to Bell Fourche, South Dakota.[6/]

3. The motion of Pacific Telephone and Nevada Bell dated December 14, 1983, seeking waivers of the decree so that they may (a) provide E911 emergency service; and (b) continue, for a limited period of time, certain inter-LATA serving arrangements between the customer's premises and the serving central office.[7/]

4. The motion of Pacific Telephone and Nevada Bell dated December 14, 1983, for an exception to the predominant use requirement of section VIII(G) of the decree and the provisions of the plan of reorganization for assigning the following assets: (a) the crossbar tandem switch in the Fresno LATA in California; (b) the crossbar tandem switch in the Stockton LATA in California; (c) the 4A switch in Sherman Oaks, in the Los

---

6/ MCI opposes this limited waiver. The Court finds that, because no other carrier is willing to provide the service in question and because of national defense considerations, the waiver is fully appropriate.

7/ Here again, the Court need not and does not, at this time, decide under what circumstances AT&T may exercise its right under the decree and the plan of reorganization to establish points of presence.

Angeles LATA in California; (d) the Chico DMS 200 switch in the Chico LATA in California; (e) the building located at 112 South 6th Street, Las Vegas, Nevada; (f) the lease for the building at 500 Greenbrae Drive, Sparks, Nevada; and (g) the EPSCS switch in San Jose, California.

5. Southwestern Bell's motion of December 15, 1983 for approval of an additional LATA in Missouri. The creation of the new Westphalia LATA will permit the six Southwestern Bell exchanges, currently in the St. Louis LATA, to continue to home on the United Telephone Company toll switch in Jefferson City and thereby to avoid the costly rearrangement of network facilities which would otherwise be necessary.

6. Bell Atlantic's motion of December 15, 1983 for waivers of the decree so that it may (a) provide E911 emergency service,[8/] and (b) provide inter-LATA directory assistance to

---

8/ Bell Atlantic is the only Regional Company which maintains that a waiver of section II(D)(1) of the decree is not required for the provision of E911 service. The Department of Justice argues strenuously, and the Court agrees, that the information storage and retrieval functions of E911 service are an "information service" within the meaning of the decree, and that such functions may not be performed without a waiver. The Court, however, hereby grants such a waiver under section VIII(C) of the decree.

customers of independent telephone companies[9] which are unable to receive directory assistance services from their own exchanges and were receiving such assistance from Bell Atlantic on December 31, 1983.[10] Bell Atlantic may also make the following changes in LATA boundaries:

(a) the Lewistown and McVeytown exchanges, currently associated with the Altoona LATA, may be associated with the Capital LATA;

9/ Directory assistance in this context does not fall within the scope of "official services" that an Operating Company may provide under the decree. "Official services" are "communications between personnel or equipment of an Operating Company located in various areas and communications between Operating Companies and their customers." United States v. Western Electric Co., 569 F. Supp. 1057, 1097 (D.D.C. 1983), aff'd, ___ U.S. ___ (1983) (emphasis supplied). Here, Bell Atlantic seeks to provide directory assistance to the customers of independent telephone companies. Its request, therefore, is more properly viewed as one for a waiver of section II(D)(1) of the decree which prohibits the Operating Companies from providing "interexchange telecommunications services" and from engaging in "information services."

10/ AT&T does not object to a waiver permitting Bell Atlantic to provide directory assistance to customers of independent telephone companies provided that (1) the independent company customer and the requested number are within the same NPA; (2) the Operating Company is not able to provide access for inter-LATA directory assistance separately from its provision of intra-LATA directory assistance service; and (3) such waiver is limited to the period of time which Bell Atlantic demonstrates is necessary.

AT&T has not stated, however, that it will provide inter-LATA directory assistance service on its own, but that it will merely provide inter-LATA carriage of such calls between its own points of presence: the actual assistance service will be provided by the Operating Company. The Court will therefore condition the waiver only on the limitations proposed by the Department of Justice. The waiver will minimize the effects of divestiture on independent telephone companies, and it will not impair competition.

(b) the Upper Black Eddy exchange in Pennsylvania, currently associated with the North Jersey LATA, may be associated with the Philadelphia LATA;[11/]

(c) the Delmar, Delaware exchange may be included in the Philadelphia LATA and non-optional EAS exceptions from Delmar, Delaware, to Delmar, Salisbury and Sharpstown, Maryland, are granted;[12/]

(d) C&P Telephone Company of Maryland may transfer a 1/4 square mile area from the Columbia exchange in the Baltimore LATA to the Laurel exchange in the Washington, D.C. LATA;[13/] and

(e) C&P Telephone Company of Virginia may include a small portion of the Shenandoah National Park, which it is certified to serve, in the Culpeper LATA.

7. The motion of the Department of Justice dated December 20, 1983 to modify the association of certain independent telephone company territory so as to account for network homing

---

11/ Accordingly, the existing EAS exceptions to Easton, Riegelesville and Springton, Pennsylvania are deleted, and Bell of Pennsylvania is granted a non-optional EAS exception to continue service to Milford, New Jersey.

12/ Existing EAS exceptions from Delmar, Delaware, to Georgetown, Gumboro, Laurel and Seaford, Delaware, which are no longer necessary, are deleted. Diamond State is granted a non-optional exception to continue service to Delmar, Salisbury and Sharpstown, Maryland.

13/ This area is currently undeveloped land without customers or service, but it will apparently soon be developed into the second phase of an industrial park, the first phase of which is already served by the Laurel exchange.

arrangements and to avoid unnecessary disruption. The Court approves the following adjustments:

(a) Connecticut -- New York Telephone Company may continue to exchange intrastate traffic between the Greenwich and Byram exchanges with SNET pursuant to the parties' existing agreement;

(b) Alabama -- GTE's Montgomery serving area may be associated with the Montgomery LATA rather than being a part of the disassociated Dothan Exchange Area;

(c) Georgia -- GTE's Fitzgerald toll center and its tributaries, which are currently associated with both the Macon and Albany LATAs, may be associated with the Albany LATA only;

(d) Illinois -- The Court approves the changes necessary to conform to the Market Service Area associations approved by the Illinois Commerce Commission in its order of October 13, 1983;[14/]

Specifically, the following changes are thus approved with regard to Illinois:

(i) GTE's Sandwich toll center and its tributaries,[15/] currently associated with the Sterling LATA, may be associated with the Chicago LATA;

14/ General Telephone Company of Illinois Petition for Certain Modifications to the Market Service Area Configuration as Previously Established by the Commission, Docket No. 83-0501.

15/ Fairville, Leland, Mindota, Paw Paw, Sandwich, Sheridan, Somonauk, West Brooklyn, and Compton.

(ii) GTE's Clinton, Kenny, and Weldon exchanges, currently associated with the Springfield LATA, may be associated with the Forrest LATA;

(iii) GTE's Westport exchange, currently part of the nonassociated Olney MSA, may be associated with the Bloomington, Indiana LATA;

(iv) the Mid-Century Telephone Company's Bishop Hill and Lafayette exchanges, currently part of the nonassociated Galesburg MSA, may be associated with the Peoria LATA;

(v) GTE's Minier exchange, currently associated with the Peoria LATA, may be associated with the Forrest LATA;

(vi) GTE's Macomb exchange and the Galesburg MSA-17 may be split from the Quincy LATA;

(vii) the Bergen Telephone Company's South Sharon and South Bergen exchanges may be associated with the Southeast Wisconsin LATA;

(viii) GTE's Portage Exchange Area, currently associated with either the Chicago or South Bend LATA, may be associated with the South Bend LATA only;

(ix) GTE's Bement and Monticello exchanges, currently associated with the Springfield LATA, may be associated with the Champaign LATA; and

(x) the Continental Telephone Company's Putnam exchange, currently associated with the Peoria exchange, may be associated with the Chicago LATA.

(e) Indiana -- GTE's Portage Exchange Area, currently associated with either the Chicago or South Bend LATA, may be associated with the South Bend LATA only. The Court also grants a waiver of section II(D)(1) of the decree so that Ameritech may provide inter-LATA cellular radio services in the western group exchanges of the Portage Exchange Area;

(f) South Carolina -- GTE's Bishopville, Manning, Shawview Heights, Summerton, and Sumter exchanges, currently associated with both the Florence and Columbia LATAs, may be associated with the Florence LATA only; and

(g) Nevada -- A second LATA, the Pahrump LATA, may be created for the Nevada Bell exchanges adjacent to Las Vegas.

8. The Bell Operating Companies' motion of December 28, 1983 requesting a waiver pursuant to section VII of the decree to permit them to continue to deliver to AT&T inter-LATA sent-paid coin calls from coin telephones. This waiver is effective until such time as the Operating Companies are able to overcome the technological limitations[16/] which presently prevent them from

---

16/ The Operating Companies cite two technological obstacles: first, the Traffic Service Position System (TSPS) which performs rate calculations and coin handling functions for AT&T cannot be modified at a reasonable cost for use by multiple carriers; second, the Operating Companies presently lack the capability to account for the coin revenues of multiple carriers.

handling inter-LATA sent-paid coin calling for multiple carriers.[17/]

II

Ontario Exchange Area with the Association of the Los Angeles LATA

The Department of Justice has requested the Court to disassociate the GTE territory in the Ontario area (the 619 NPA) from the Los Angeles LATA and the non-Bell territory associated with it.[18/] This request has generated substantial comment, receiving the support of MCI and the opposition of the State of California and the GTE Corporation.[19/] The problem has arisen because the Court in its August 5, 1983 Opinion implicitly reserved judgment on this question which at the time was still the subject of discussions between the Department of Justice and

---

17/ The Court will not limit the duration of this waiver to a specific time period. However, it does expect that the Operating Companies will work with the carriers to develop the necessary technology to overcome the obstacles on an expeditious basis.

18/ The Department states that if the proposed decree in United States v. GTE were entered, it would approve GTE's proposed Ontario exchange area as a whole.

19/ There may be some ambiguity in the position of Pacific Telephone and Telegraph Co.

the Operating Companies.[20] These discussions have led to disagreements, and the Court must therefore decide the issue in the context of the Department's motion.

This is, in some respects, a borderline case. On the one hand, Palm Springs, the principal community in the area, is approximately 100 miles from Los Angeles; the Ontario area is similar in size to other California territories which were approved as independent LATAs; and the area contains approximately 137,000 main stations -- a number which is clearly sufficient under the criteria which the Court has heretofore applied for the establishment of an independent LATA (or a disassociation from an adjacent LATA). On the other hand, the State contends -- without substantial contradiction -- that the area looks to Los Angeles for its economic, cultural, and educational life and that, except for Palm Springs, it is sparsely populated and economically disadvantaged.

The question whether configuration costs would be attached to a disassociation and in what amount, is likewise not susceptible of a clear-cut answer The State and GTE claim that such a disassociation would result in idle switching facilities worth

---

20/ There have also been discussions concerning the proposed association of the Ventura exchange area with the Los Angeles LATA, the western portion of GTE's Ontario exchange area (the 714 NPA) with the Los Angeles LATA, and GTE's Santa Barbara exchange area with the San Luis Obispo LATA. In accordance with the agreement of the affected parties, all these associations are hereby approved. The Court also approves the association of the Mariposa exchange with the Fresno LATA instead of the Stockton LATA -- a matter on which the interested parties again agree.

over $20 million, while the Department of Justice points out, with considerable plausibility, that these costs are vastly overstated. In the end, then, although disassociation would appear to be indicated, the contrary result could probably also be justified -- although with greater difficulty -- on the basis of the factors summarized above.

There is, however, an additional circumstance that has substantial significance. The California Public Utilities Commission has been holding extensive hearings on the issue of intra-LATA competition in that State. Pacific Telephone, GTE, and the Commission staff have recommended against allowing such competition,[21/] and it appears that the Commission may well make its decision in accordance with those recommendations.

It is quite true, as this Court pointed out in its Opinion of April 20, 1983, that the state regulatory bodies retain the authority under the decree to control traffic within the LATAs themselves. United States v. Western Electric Co., 569 F. Supp. 990, 1005 (D.D.C. 1983). The Court has also made it abundantly clear, however, that its decisions on the size of the LATAs would be substantially influenced by the decisions of the States and their public utilities commissions with regard to intra-LATA competition. As the Court stated last April, "the lack of competition in [the intra-LATA] market would constitute an intolerable

---

21/ Pacific has gone so far as to state that it "would not agree to any proposal that would ultimately result in competition within the Los Angeles LATA."

development." 569 F. Supp. at 1005. In approving LATA boundaries the Court has accordingly taken into account that a particular state public utilities commission "is . . . committed to promoting competition" (569 F. Supp. at 1032) or that it is opposed to intra-LATA competition.[22/]

The Court has frequently opted in favor of relatively large LATAs notwithstanding significant Department of Justice opposition because it wished to expand the area in which the local Operating Companies might carry telecommunications traffic, thus to strengthen them financially and otherwise. But it has always been an essential corollary of those decisions that the areas in question would not be artificially closed to competition. The reasons for that attitude were summed up in April of last year when the Court stated that (569 F. Supp. at 1005):

> The opening of competition lies at the heart of this lawsuit and of the decree entered at its conclusion, and the significant amount of the traffic that is both intrastate and intra-LATA should not be reserved to the monopoly carrier.

It would not be consistent with the decree in this case to leave the huge Los Angeles area, consisting of 34,000 square miles (larger than eleven states) and an enormous population, beyond the reach of any telecommunications competition. In view of the very real threat to the purposes of the decree presented

---

22/ The Court specifically noted that the Commonwealth of Virginia appeared to be the only state with a law prohibiting competition for intrastate telephone service, and it was partly for that reason that the Court rejected the LATA proposal of that state's corporation commission. 569 F. Supp. at 1005, 1027.

by a California decision against intra-LATA competition, the Court cannot justifiably enlarge the territory within which the subscribers will be relegated to a monopoly carrier. The motion of the Department of Justice is therefore hereby granted.

III

Michigan-Canada Traffic

On December 12, 1983, AT&T moved for a declaratory ruling that the Court's July 8, 1983, Opinion did not find calling between certain Michigan and Canadian cities to be intra-LATA in character. That motion is opposed by Ameritech and by the Department of Justice; it is supported by MCI.

The motion raises two issues, one procedural, the other substantive. On the procedural side, the dispute revolves around the question whether the Court approved or disapproved the association of Bell with independent traffic if that association was not specifically mentioned in the Court's July 8, 1983, Opinion.

A request was filed by AT&T on March 25, 1983, to associate the exchanges in question, and the Court, in its July 8 Opinion approved the proposed Bell-Independent classifications in bulk and without detailed listing, essentially on the basis of and for the reasons provided by the Department of Justice. AT&T argues that its March 25 submission was a perfunctory transmittal of the Operating Company wishes and should not be regarded as binding. However, the Court obviously could not, at this late date, take evidence and reconsider each association so as to go behind that

filing on the basis suggested by AT&T. The submission was before the Court,[23] the Department supported it,[24] and the Court approved it as presented.

What is involved substantively is the association of territories of certain independent telephone companies with the Operating Companies' LATAs and the character of the traffic between them. Specifically, the Court authorized Michigan Bell to provide service between Detroit, Michigan and Windsor, Ontario; between Port Huron, Michigan and Sarnia, Ontario and between Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario. The Court also granted Michigan Bell ownership of cables connecting these cities.

The Canadian communities in question are closely tied to their counterpart cities in Michigan, they are part of the metropolitan area of those citites, and if they were within the United States they would in all likelihood be within a single SMSA.[25] There is, additionally, extensive social and business intercourse between and among these communities. The Court finds no basis for declaring this traffic to be inter-LATA or to grant a waiver

---

23/ The Court is unable to accept AT&T's contention that the March 25 filing did not request an association because, among other things, the data submitted were insufficient. The Department did not request detailed justifications for combinations of SMSAs with core city distances of less than 25 miles.

24/ The Department states that "it approved those associations which it did not specifically disapprove." Memorandum of January 3, 1984 at 10.

25/ See Rand McNally & Company, Rand McNally Commercial Atlas & Marketing Guide 95-96 (1983).

simply because the communities are across the international line, and AT&T's motion is accordingly denied.[26]

IV

Registration of Bell Name and Logo

The Operating Companies request the entry of an order under section 37 of the Lanham Act, 15 U.S.C. § 1119, directing the U.S. Patent and Trademark Office (PTO) to modify its federal registration records to conform to the July 8, 1983 decision of this Court.[27] Except for one matter, discussed below, no objections have been filed to that request. Rather, the motion is supported by AT&T, and the Department of Justice has indicated that it has no objection to the requested order if the Court finds that the statutory standard is met.

First. The Court held on July 8, 1983, that the Operating Companies would have the right to use the Bell name and marks in conjunction with appropriate modifiers, and that AT&T would not be permitted to use that name and those marks (except in certain limited circumstances). United States v. Western Electric Co.,

---

26/ In its December 12, 1983, motion AT&T also requests declaratory rulings that the sharing of facilities between AT&T and the Operating Companies is permitted with respect to Operating Company-owned multifunction network operations support facilities for the reformating or other processing of work requests submitted by AT&T for inter-LATA private line circuits and with respect to multifunction order processing and billing systems for additions and substitutions to embedded business CPE systems. These requests are hereby granted.

27/ The Operating Companies are joined in this motion by Cincinnati Bell Inc. and Southern New England Telephone Company.

supra, 569 F. Supp. at 1074-82. In accordance with that decision, the Regional Companies have now entered into an agreement with AT&T by which the latter assigns the Bell name and marks to these companies.[28/] The Regional Companies thereafter entered into a Supplemental Agreement among themselves concerning their use of the assigned name and marks.[29/] This second agreement provides in essence that each Regional Company will be required to use, both inside and outside its territory, one of the distinctive modifiers listed in a schedule attached to the agreement.[30/]

These agreements, according to the Operating Companies, will achieve three objectives: (1) they will assign the full benefits of the name and marks to the Regional Companies, including their goodwill, priority of use, and registration rights; (2) they will avoid public confusion in the use of the Bell name and marks; and (3) they will minimize the risk of future trade name and trademark infringement litigation. The Court agrees that the agreements are reasonably designed to achieve these objectives and

---

28/ As the parties have suggested, it makes sense to assign the name and mark directly to the Regional Companies rather than to the local Operating Companies (who would then have to license and exercise quality control over their parent Regional Companies). See Dawn Donut Co. v. Hart's Food Stores, Inc., 267 F.2d 358 (2d Cir. 1959).

29/ Both of these agreements have been filed with the Court.

30/ For example, Bell Atlantic may use the Bell symbol within the territory of Southwestern Bell but only in conjunction with its corporate name or one of its other modifiers.

that they appropriately implement the Court's July 8, 1983 decision. It remains to be determined whether the Court may and should enter the requested order directed to the PTO.

Under section 37 of the Lanham Act,[31] a court may issue an order to modify the PTO's register by conforming it to a court judgment. Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 13 (2nd Cir. 1976). This judicial authority is appropriately exercised where, as here, the Court has already considered the disposition of the name and marks in question both in light of fundamental trademark principles and under other legal authority. See Durox Co. v. Duron Paint Manufacturing Co., 320 F.2d 882, 886 (4th Cir. 1963).[32] Absent a court order, the Rgional Companies would face lengthy and -- in view of the decisions

---

31/ That section provides:

> In any action involving a registered mark the court may determine the right to registration, order the cancellation of registrations, in whole or in part, restore cancelled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Commissioners [of Patents and Trademarks] who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

32/ The Court's powers in this respect are broad. See, e.g., American Heritage Life Insurance Co. v. Heritage Life Insurance Co., 494 F.2d 3, 13-14 (5th Cir. 1974); Safeway Stores, Inc. v. Safeway Quality Foods, Inc., 433 F.2d 99 (7th Cir. 1970); Avon Shoe Co. v. David Crystal, Inc., 279 F.2d 607 (2nd Cir. 1960); and Massa v. Jiffy Products Co., 240 F.2d 702 (9th Cir. 1957);

already made -- unnecessary administrative proceedings before they could secure a definitive ruling from the PTO.

The relief requested by the Regional Companies would direct the PTO to issue geographically limited registrations for concurrent use of unmodified versions of the assigned name and marks. Such registrations would properly implement the judgment herein, and they are therefore appropriately mandated by the Court.[33/] It may be noted, too, that, in any event, an agreement among concurrent users as to their respective areas of concurrent use is normally accepted by the PTO unless it is made in bad faith or does not ensure against the likelihood of confusion[34/] -- problems not present here.

For these reasons, the Court herewith enters a separate order directing the PTO to modify its federal registration records in conformity with the Court's decision concerning the Bell name and marks as clarified herein.

Second. The Tandy Corporation and MCI object to section 1.04 of the Agreement between AT&T and the Regional Companies. That section, in addition to providing that AT&T will refrain generally from using the Bell name and marks, goes on to state

---

33/ See also, section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d); compare Old Dutch Foods, Inc. v. Dan Dee Pretzel & Potato Chip Co., 477 F.2d 150, 156-57 (6th Cir. 1973) with Safeway Stores, Inc. v. Safeway Quality Foods, Inc., supra. And see, Wiener King, Inc. v. Wiener King Corp., 407 F. Supp. 1274, 1284-85 (D.N.J.), rev'd on other grounds, 192 U.S.P.Q. 353 (3d Cir. 1976).

34/ In re Diamond Walnut Growers, Inc. v. Sunsweet Growers, Inc., 204 U.S.P.Q. 507, 511 (T.T.A.B. 1979).

that AT&T reserves the right to use the name "Bell" in Bell Laboratories, in its foreign operations, and in the manufacture of telecommunictions or customer premises equipment for disposition outside the United States.[35/] Tandy and MCI suggest that AT&T may be contemplating (1) use of the Bell name or marks in the marketing of its products by reference to Bell Laboratories in its promotional materials, and (2) use of the name or marks in connection with promotion in the United States designed to stimulate foreign sales.

There is no merit to these objections. The Court has expressly authorized AT&T to continue to use the word "Bell" in Bell Laboratories, and it has recognized that in that context such use would not be confusing. 569 F. Supp. 1057, 1081 n.96. The Court has also authorized AT&T to use the Bell name and marks in its foreign operations, and it has concluded that, with respect to such use, there is no likelihood of confusion. 569 F. Supp. at 1081 n.96. AT&T has stated that it "does not intend to market products and services through Bell Laboratories" and that if it used the Bell name or mark on products for sale to exporters, it "would not use the marks in mass marketing or in any other context in which domestic confusion could arise." Reply of AT&T at 3-4.

35/ Section 1.04 also provides that

> . . . AT&T may use the name 'Bell' or the Bell Symbol in the United States for the sole and exclusive use of promoting sales of products and services abroad.

These statements by AT&T are not only sufficient in themselves, they are also appropriate restatements of that company's obligations under the decree. There is nothing in section 1.04 of the AT&T-Operating Company agreement that could be read to modify the decree; and if that were its intended purpose or effect, it would obviously be invalid. In short, the Tandy-MCI "concerns" regarding section 1.04[36/] are not only totally unfounded; they are also premature and out of order in the context of the Operating Company request for an order under the Lanham Act.

V

Use of Bell Name and Marks by Central Service Organization

Nynex Corporation has moved for clarification of the Court's July 8, 1983 decision to confirm that the Court does not object to the use by the Central Service Organization (CSO) of the Bell name and marks assigned to the Regional Companies by AT&T. See Part IV supra.[37/] That motion, too, is opposed by Tandy Corporation and by MCI.

The Nynex motion seeks permission for the CSO to use the Bell name and marks for three reasons: (1) such use would be a

---

36/ Neither Tandy nor MCI has alleged that AT&T has violated the decree in any manner, either in connection with Bell Laboratories or through its foreign marketing and promotional activities.

37/ Mr. Rocco Morano, the designated chief executive officer of the CSO wrote to the Court last September asking for similar relief. The Court did not act on that request but advised Mr. Marano that a motion by a party to the litigation was required.

reflection of the corporate identity of the CSO as a subsidiary of its seven [Regional] parent companies; (2) use of the name and marks "will serve to remind the public of [the CSO's] affiliation with the Bell Operating Companies"; and (3) a number of the CSO's 8,000 employees will be on rotation from the local Operating Companies and "[t]heir tradition of excellence, and the good will they have earned, will go along with them." Tandy and MCI respond, basically, that all of these reasons are non sequiturs and of little relevance; that the Bell name and marks have value only in the context of marketing; and that therefore it is joint marketing that Nynex, the CSO, and the other Regional Companies must have in mind.

If there were any indication that the CSO and the Regional Companies were going to use the Bell name and marks for joint marketing efforts, that would indeed raise the most serious concerns. The Court has previously stated that it would not allow the Bell System to rise again, "Phoenix-like," in violation of the basic core of the decree, and it reiterates that determination here. But that is not what the Nynex motion requests or contemplates.

Nynex states (Reply at 4) that

> The [Regional Operating Companies] do not intend, nor does the CSO, to have the CSO market any of the Regional Operating Companies'] services or products. On the contrary, the CSO will provide technical, operational and other centralized support to the [Operating Companies] in connection with the [Operating Companies'] offering of exchange telecommunications services and exchange

> access. The [Operating Companies] will themselves market all of their products and services.

Here, as in Part IV supra, the Court will take the movants at their word, not only because of what they say, but also because any other course of action would constitute a violation of the decree.

It may be that the Tandy-MCI position is right in its assessment that, aside from marketing, the Bell name and marks will be of little value to the CSO; but that is a judgment for the CSO and the Regional Companies to make, not for their competitors or for this Court. Beyond that, there is at least one factor that the Court not only finds persuasive from the point of view of those who are requesting relief but also, more broadly, from that of the purposes of the decree.

Nynex points out that, in order to maintain technical excellence, the CSO will have to attract and hold on to the highest caliber of personnel from the scientific and technical communities. Such personnel, says Nynex, are more likely to be attracted by an organization they recognize to be associated with technical excellence. Moreover, it is said, future technical achievements will be more readily recognized in the research, engineering, and scientific communities as supported by the Regional Companies if an identification with "Bell" is present.

The Court has on several occasions expressed its conviction that the CSO represents a very important ingredient in the future of telecommunications in this country -- in regard both to the